

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HERIBERTO NAVARRO ORTIZ,

Defendant.

3:18-CR-30152-RAL

ORDER DIRECTING RESPONSE

Defendant Heriberto Navarro Ortiz filed a motion seeking the return of seven pieces of property he alleges were taken from him when he was “detained and incarcerated.” Doc. 55. A district court with jurisdiction over a criminal matter has ancillary equitable jurisdiction over post-conviction motions for the return of property. Thompson v. Covington, 47 F.3d 974, 975 (8th Cir. 1995) (per curiam); United States v. Martinez, 241 F.3d 1329, 1330–31 (11th Cir. 2001). Rule 41(g) of the Federal Rules of Criminal Procedure provides that a “person aggrieved by . . . the deprivation of property may move for the property’s return.” The Eighth Circuit uses a burden-shifting framework to resolve motions for return of property under Rule 41(g). Jackson v. United States, 526 F.3d 394, 396–97 (8th Cir. 2008). First, the movant “must show that he is entitled to lawfully possess the seized property at issue, and that the Government has or had the property.” United States v. Howard, 973 F.3d 892, 894 (8th Cir. 2020) (citations omitted). The burden of establishing lawful entitlement to the property “is often satisfied by showing that the property was seized from the movant’s possession, as a person from whom property is seized is presumed to

have a right to its return.” Jackson, 526 F.3d at 396. If the movant meets his initial burden, “the Government must then establish a legitimate reason to retain the property.” Howard, 973 F.3d at 894 (cleaned up and citation omitted).

Ortiz’s motion contains very little detail, and this Court does not know who may have taken the property Ortiz claims was seized upon his arrest. Because it may involve some work for the Government to determine what happened to Ortiz’s property, this Court will give the Government sixty days from the date of this order to respond to Ortiz’s motion for return of property. Ortiz will then have thirty days from the date the government responds to file a reply.

DATED this 13th day of October, 2021.

BY THE COURT:



---

ROBERTO A. LANGE  
CHIEF JUDGE